

MICT-13-33
01-03-2017
(1475 - 1472)

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33
CASE No. MICT-13-43

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Mr. Olufemi Elias

Date Filed: 27 February 2017

THE PROSECUTOR

THE PROSECUTOR

v.

v.

JEAN DE DIEU KAMUHANDA

AUGUSTIN NDINDILYIMANA *et al*

Public

MOTION FOR PUBLIC VERSION OF DECISION

Office of the Prosecutor:

Serge Brammertz
Richard Karegyesa

Augustin Ndindiliyimana *et al*:

Christopher Black for Augustin Ndindiliyimana
Gilles St. Laurent for Augustin Bizimungu
Fabien Segatwa for Innocent Sagahutu
Charles Taku for Francis Xavier Nzuwonemeye

Jean de dieu Kamuhanda:

Peter Robinson

Received by the Registry
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Uwaipopo

1. Jean de dieu Kamuhanda respectfully requests that the President designate a Single Judge to consider ordering that a public redacted version of a confidential decision in the *Ndindiliyimana et al* ICTR case be issued.¹

2. On 24 February 2017, in its *Decision on a Motion to Rescind Witness ALM's Protective Measures*, the Single Judge cited the following decision in support of her holding that “in the absence of a witness's consent, varying or rescinding protective measures may be warranted where there is a change in the circumstances that initially justified granting the protective measures”:

Augustin Ndindiliyimana et al v The Prosecutor, Case No. ICTR.00-56-A, *Decision on Innocent Sagahutu's Motion for Clarification or for Variation of Protective Measures* (22 March 2012) (confidential), para. 12²

3. The principle for which the above decision has been cited is an important one and remains the subject of litigation at the Mechanism.³ A public redacted version of the decision relied upon by the Single Judge in Mr. Kamuhanda's case should be made available to the public so that it can be part of the jurisprudence and available to be used by parties in future cases before the MICT.

4. Indeed, Mr. Kamuhanda hopes to make further motions for rescission of protective measures in his case as he endeavors to improve the transparency of the events that led to his wrongful conviction in anticipation of filing a motion for review of his judgement.⁴ Access to the above-referenced decision will assist him in those motions, particularly when they may relate to witnesses who may not be willing to consent to rescission of protective measures.

5. A person seeking access to confidential material from another case at the Mechanism must establish that such material is likely to assist its case materially, or that

¹ Pursuant to Rule 86(G)(ii), as the *Ndindiliyimana et al* case is completed, Mr. Kamuhanda applies for a Single Judge to be appointed in the proceedings in his case, MICT-13-33.

² P. 4, fn. 23

³ See for example, *Prosecutor v Karadzic*, MICT-13-55-R86F.2, *Prosecution's Further Submissions in Response to the Registrar's Submission in relation to the Order of 20 September 2016* (29 September 2016), para. 1.

⁴ Previous motions to rescind protective measures have been made by Mr. Kamuhanda with respect to Witnesses NTD (*Decision on an Application pursuant to Rule 86(H)* (12 January 2016); ALB (*Decision on an Application pursuant to Rule 86* (23 March 2016); VBG (*Decision on an Application pursuant to Rule 86* (19 April 2016); and ALM (*Decision on a Motion to Rescind Witness ALM's Protective Measures* (24 February 2017).

there is at least a good chance that it would.⁵ Mr. Kamuhanda therefore satisfies the criteria for access even if there is some reason why the decision cannot be made available to the public with redactions.

6. On earlier occasions in this case, when the Single Judge or Prosecution cited confidential decisions, access to those decisions was granted and public version of the decisions issued.⁶

7. An ICTY Trial Chamber has held that the Prosecution's citation to confidential decisions to which the accused does not have access violates the right to equality of arms.⁷ Similarly, in order to remedy this inequality, Mr. Kamuhanda should be given access to the decision, to which the Prosecution already has access by virtue of it being a party to the *Ndindiliyimana et al* case.

8. An order that a public redacted version of the *Decision on Innocent Sagahutu's Motion for Clarification or for Variation of Protective Measures* in the *Ndindiliyimana* case be issued would also be consistent with the principle that all proceedings before the Mechanism shall be public unless there are exceptional reasons for keeping them confidential.⁸

⁵ *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion for Access to Ex Parte Filings in Completed Cases* (10 May 2012) at p. 3

⁶ *Prosecutor v Milosevic*, No. MICT-13-58, *Decision on a Motion for a Public Redacted Version of the 27 January 2010 Decision on Application of the Prosecutor of the Tribunal for Variation of Protective Measures* (10 May 2016) at p. 2; *Prosecutor v Stanisic & Zupljanin*, No. IT-08-91-R75H.3, *Decision on Motion for Redacted Version of Decision* (29 June 2016) at p. 2; *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Decision on a Motion for Public Version of a Decision* (24 January 2017)

⁷ *Prosecutor v Prlic et al*, No. 04-74-T, *Decision on a Stojic Defence Request Regarding References to Confidential Decisions Rendered by Other Chambers* (23 March 2009)

⁸ *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 8; *Prosecutor v Kamuhanda*, No. MICT-12-33-R86.1, *Decision on a Motion to Reclassify a Submission by the Registry* (5 February 2016), p. 2; *Prosecutor v Oric*, No. MICT-14-79, *Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015* (17 February 2016) at para. 8; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules* (18 July 2016) at p. 3

Word count: 932

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive style with large, rounded letters.

PETER ROBINSON

Counsel for Jean de dieu Kamuhanda



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		No. of Pages/ Nombre de pages :	4
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